

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.Nos.17509, 17510 and 17511 of 2018

and

W.M.P.Nos.20784, 20785 and 20786 of 2018

T.Balaji ... Petitioner in WP.No.17509/2018
M.Lakshmi ... Petitioner in WP.No.17510/2018
P.Annadurai ... Petitioner in
W.P.No.17511/2018

Vs.

- 1.The Government of Tamil Nadu
Rep. By its Commissioner of Municipal Administration
And Water Supply Department,
Fort St. George, Chennai - 600 009..
- 2.The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.
- 3.The Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode. Respondents in all WPs

Prayer in WP.No.17509/2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.C2/1689/2018 dated 30.04.2018 on the file of the 2nd Respondent and quash the same; consequently direct the Respondents to restore the petitioner's scale of pay at Rs.5200-20200+1900 and continue to pay the same in the present post and also to refund the recovered amount of Rs.5,664/- from the salary of the petitioner's salary for month of May 2018.

Prayer in WP.No.17510/2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.C2/1689/2018 dated 30.04.2018 on the file of the 2nd Respondent and quash the same; consequently direct the Respondents to restore the petitioner's scale of pay at Rs.5200-20200+1900 and continue to pay the same in the present post and also to refund the recovered amount of Rs.3704/-

from the salary of the petitioner's salary for month of May 2018.

Prayer in WP.No.17511/2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.C2/1689/2018 dated 30.04.2018 on the file of the 2nd Respondent and quash the same; consequently direct the Respondents to restore the petitioner's scale of pay at Rs.5200-20200+1900 and continue to pay the same in the present post and also to refund the recovered amount of Rs.9,932/- from the salary of the petitioner's salary for month of May 2018.

For Petitioners : Mr.P.Raja Vel

For RR 1 and 3 : Mr.J.Pothiraj
Special Government Pleader

For 2nd Respondent : Mr.Muruganantham
For Mr.M.Rajamathivanan

COMMON ORDER

What is challenged in these writ petitions is the order of re-fixation of pay of the petitioners by the impugned communications in Na.Ka.No.C2/1689/2018 dated 30.04.2018.

2.When the matter is taken up for hearing, the learned counsel for the petitioners would submit that the impugned orders passed in violation of principles of natural justice as no notice was issued to the petitioners. Therefore, he would submit that on this ground, the writ petitions are liable to be allowed. Moreover, the learned counsel would also submit that the Hon'ble Supreme Court and also this Court has held that in case of excess amount being paid on wrong fixation, the same shall not be recovered from the Group C and D employees, if such excess payment or wrong fixation of pay was not done on the basis of any misrepresentation by the employees concerned.

3.On the materials disclosed in the writ petitions, it appears that the pay has been wrongly fixed and therefore, excess payment sought to be recovered. This Court is of the view that the excess amount which is sought to be recovered is not sustainable, as the petitioners belong to Group D service and they were not responsible for any wrong fixation of pay and the consequence of excess payment. In view of the same, the recovery ordered on the basis of re-fixation of pay cannot be sustained and therefore, the same is set aside.

4.As regards the re-fixation of pay is concerned, since no notice has been issued to the petitioners before such re-fixation is done, this Court is of the view that the petitioners are entitled to be put on notice before such re-fixation is concerned.

5.In view of the above, on the short ground that no notice has been issued to the petitioners, the Writ Petitions are allowed and the impugned order in Na.Ka.No.C2/1689/2018 dated 30.04.2018 is set aside. The respondents are directed to issue notice to the petitioners and call for explanation from the petitioners before any re-fixation is done. In any event, as held above, no recovery could be effected in regard to the so-called excess payment paid to the petitioners. It is also made clear that any amount recovered towards excess payment from the petitioners shall be refunded forthwith to the petitioners. The respondents are directed to pass orders for refunding the recovery amount within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(insp, cell)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Commissioner of Municipal Administration
Government of Tamil Nadu
And Water Supply Department,
Fort St. George, Chennai - 600 009..

2.The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.

3.The Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode.

4.The Spl Government Pleader,
High Court, Madras.

+2ccs to Mr.M.Rajamathivanan, Advocate SR.No. 59366,59367
+3ccs to Mr.P.Raja Vel, Advocate SR.No. 58989,58990,58991
+1cc to Mr.M.Rajamathivanan, Advocate SR.No. 59365
(22/07/2019)

W.P.Nos.17509, 17510 and 17511 of 2018